

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES J. FOREMAN,

Plaintiff,

-against-

ALVIN L. BRAGG,

Defendant.

23-CV-7066 (LTS)

ORDER DIRECTING PAYMENT OF FEES
OR SECOND AMENDED IFP APPLICATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff filed this action *pro se*. On August 11, 2023, the Court directed Plaintiff, within 30 days, to either pay the \$402 in filing fees that are required to file a civil action in this Court or, to request authorization to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees, submit an IFP application. In response to the order, Plaintiff submitted an IFP application with incomplete responses, which failed to establish that he is unable to pay the filing fees. On September 11, 2023, the Court directed Plaintiff, within 30 days, to submit an amended IFP application providing sufficient information concerning his income and expenses to support his assertion that he is unable to pay the filing fees. On October 12, 2023, Plaintiff filed an amended IFP application. For the following reasons, the Court directs Plaintiff to submit a second amended IFP application.

DISCUSSION

Under the IFP statute, 28 U.S.C. § 1915, the Court may allow a litigant to proceed without prepayment of the filing fees upon a showing that he or she is unable to pay the fees. *See* 28 U.S.C. § 1915(a)(1). The statute “insure[s] that indigent persons have equal access to the judicial system,” *Hobbs v. Cnty. of Westchester*, No. 00-CV-8170, 107, 2002 WL 868269, at *1 (S.D.N.Y. May 3, 2002), and courts “have broad discretion to determine whether a litigant has

sufficiently demonstrated poverty,” *Alli v. Moore*, No. 14-CV-6597, 60, 2015 WL 5821174, at *1 (S.D.N.Y. Sept. 15, 2015) (citations omitted). The IFP statute “neither requires a litigant to demonstrate absolute destitution, nor requires dismissal for inaccuracies, misstatements, or minor misrepresentations made in good faith.” *Vann v. Comm’r of N.Y.C. Dep’t of Corr.*, 496 F. App’x 113, 115 (2d Cir. 2012) (summary order) (internal quotation marks and citations omitted). Dismissal under Section 1915(e)(2)(A) is warranted, however, “where a plaintiff conceals or misrepresents his or her financial assets or history in bad faith to obtain [IFP] status.” *Id.* “[D]eliberate concealment of income in order to gain access to a court without prepayment of . . . fees” is an example of such bad faith. *Id.*

Plaintiff alleges in his amended IFP application that he is unemployed, but he answers “not applicable” to the questions about his last date of employment and his gross monthly wages at the time. (ECF 5, at 1.) He further indicates that he has no other sources of income, no money in the bank, and he owns no assets. Plaintiff asserts, however, that he has \$3,500 in monthly expenses and that he relies on “church donations” to pay these expenses. (*Id.* at 2.) He also responds “none applicable” to the question concerning whether he has any dependents and he does not state whether he has any debts or other financial obligations. (*Id.*)

It is unclear whether Plaintiff is unable to pay the fees to bring this action because he does not fully answer all of the questions on the IFP application, specifically, those concerning: (1) the date of his last employment; (2) the amount of wages from his last employment; (3) how he is able to pay his \$3,500 monthly expenses solely from church donations without any other assets or source of income; and (4) whether he has any debts or other financial obligations and, if so, what they are and the amounts he pays for those obligations.

Accordingly, within 30 days of the date of this order, Plaintiff must either pay the \$402 in fees or fully complete, sign, and submit the attached second amended IFP application. If Plaintiff submits the second amended IFP application, it should be labeled with docket number 23-CV-7066 (LTS), and address the deficiencies described above by providing facts to establish that he is unable to pay the fees to bring this action. Plaintiff should fully answer all of the questions in the second amended IFP application. If Plaintiff fails to establish in the second amended IFP application that he is unable to pay the filing fees, the Court will deny him leave to proceed IFP and he must pay the fees to proceed with this action.

CONCLUSION

The Court directs Plaintiff to pay the \$402 in fees or submit a second amended IFP application within 30 days. If Plaintiff fails to pay the fees or submit a second amended IFP application within the time allowed, the action will be dismissed.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that appellant demonstrates good faith when seeking review of a nonfrivolous issue).

SO ORDERED.

Dated: October 30, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person
must submit a separate application))

-against-

CV _____ () ()

(Provide docket number, if available; if filing this with
your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

**SECOND AMENDED
APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS**

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are:

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(b) Rent payments, interest, or dividends	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

- | | | |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

_____		_____	
Dated		Signature	
_____		_____	
Name (Last, First, MI)		Prison Identification # (if incarcerated)	
_____	_____	_____	_____
Address	City	State	Zip Code
_____		_____	
Telephone Number		E-mail Address (if available)	